
	KERALA AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX DEPARTMENT TAX TOWERS, THIRUVANANTHAPURAM	
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BEFORE THE AUTHORITY OF: Dr. S.L. Sreeparvathy, IRS &
: Shri. K. Abdul Latheef

Legal Name of the applicant	M/s. Confident Projects Residential
GSTIN	32AAKFC5777G1ZB
ARN	AD320822000057O
Address	52/2618, 868/2, Confident Projects Residential, SA Road, Vytilla, Ernakulam - 682019.
Advance Ruling sought for	Whether the rate mentioned Notification No. 3 of 2019 in Clause(ii) a(i) for affordable residential apartments and rate mentioned in Clause (iii) (a) (ia) for other than affordable residential apartments can be effectively levied in a single project/ building that is being developed as Residential Real Estate Project.
Date of Personal Hearing	25.05.2023
Authorized Representative	Shri. Lazar Dominic, Chartered Accountant

ADVANCE RULING No. KER/18/2023 Dated 27/06/2023

1. M/s. Confident Projects Residential, SA Road, Vytilla, Ernakulam (herein after referred to as the applicant) is a leading builder in the State of Kerala. The applicant is engaged in the construction and development of Residential Real Estate Projects.



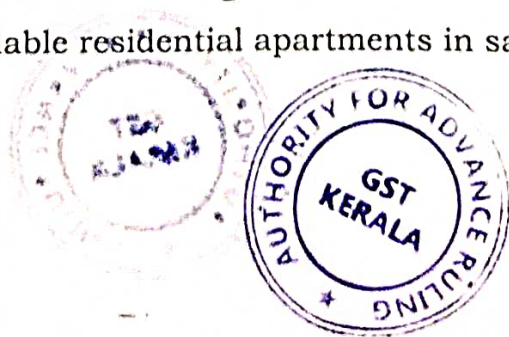
2. At the outset it is clarified that the provisions of the Central Goods and Services Tax Act, 2017 (*herein after referred to as CGST Act*) and the Kerala State Goods and Services Tax Act, 2017 (*herein after referred to as KSGST Act*) are same except for certain provisions. Accordingly, a reference herein after to the provisions of the CGST Act, Rules and Notifications issued there under shall include a reference to the corresponding provisions of the KSGST Act, Rules and the Notifications issued there under.

3. **The applicant requested advance ruling on the following:**

3.1. Whether the rate mentioned Notification No. 3 of 2019 in Clause(ii) a(i) for affordable residential apartments and rate mentioned in Clause (iii) (a) (ia) for other than affordable residential apartments can be effectively levied in a single project/ building that is being developed as Residential Real Estate Project.

4. **Contentions of the Applicant:**

4.1. The applicant submits that they are involved in the construction and development of residential real estate projects. After the announcement of affordable housing schemes by the Government of India under PMAY, the applicant has also engaged in the construction and development of affordable housing segment. Currently they are offering 15 projects under the affordable housing segment and 19 projects as other than affordable housing scheme. After the new scheme on real estate sector as per Notification No. 3/2019 has been made effective, the applicant is remitting GST at 1% [effective rate] for affordable housing projects and 5% [effective rate] for other than affordable residential real estate projects. Now with a view to offer increased inventory of affordable residential apartments, the applicant is desirous of offering both affordable residential apartments and other than affordable residential apartments in same residential project.



4.2. Affordable residential apartment is defined in clause (xvi) of Notification No. 3/2019 that "having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities for which the gross amount charged is not more than forty five lakhs rupees". The tax charged is at 0.75% CGST and 0.75% SGST with 1/3 abatement which brings the effective rate to 1% without input tax credit. All other apartments not fall under the above criteria are classified as other than affordable residential apartment and are charged at 3.75% CGST and 3.75% SGST with 1/3 abatement bringing the effective rate to 5%.

4.3. As per clause (ii)(a)(i) of the notification No. 3/2019 the effective rate of 1% for affordable apartments in residential real estate projects states that "construction of affordable residential apartments by a promoter in a residential real estate project which commences on or after 1st April 2019 or in an ongoing residential real estate project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". The applicant submits that the development of affordable housing within a residential real estate project and as such if the project qualifies as a residential real estate project, then in such projects, any apartments which qualify the above definition of an affordable apartment, the same may be charged to tax at effective rate of 1%.

4.4. The applicant now proposes a new project that will have 94 affordable housing units and 48 non-affordable units in a single residential real estate project. The affordable housing units qualify under the limit on both price



and area assigned as per the above notification. The applicant proposes to sell these residential units at 0.5% CGST and 0.5% SGST for affordable and 2.5% CGST and 2.5% SGST for non-affordable units.

4.5. The applicant concludes that the tax rates and their applicability towards real estate sector is clearly specified in the rate notification No. 3/2019. The intention of the legislature is to allow a reduced rate of tax towards affordable housing. There is no restriction on the applicability of reduced tax rate to affordable housing units, when it is involved in a mixed real estate project. The applicant hence submitted the application for advance ruling for getting a clarification in this issue to avoid confusion and future litigation. They also request concurrence for the tax computation made herein for the proposed project, which is illustrated in their submission.

5. Comments of the Jurisdictional Officer:

The application was forwarded to the jurisdictional officer as per provisions of Section 98(1) of the CGST Act. The Jurisdictional Officer reported that there are no pending or decided proceedings against the applicant under any provisions of the GST Act 2017.

6. Personal Hearing:

The applicant was granted opportunity for personal hearing on 25.05.2023 through Virtual Mode. Shri.Lazar Dominic, Chartered Accountant represented the applicant. The applicant filed detailed statement of facts along with the application. He requested to issue the ruling on the basis of the submissions made by them in the application and during the personal hearing.

7. Discussion and Conclusion:

7.1. We have gone through the facts of the case as disclosed in the application and have also considered the oral submissions made during



personal hearing. The question to be answered is whether the rate of GST of 0.75 % and 3.75% prescribed under Item (i) and (ia) of entry at Sl No. 3 of Notification No. 11/2017 CT (Rate) dated 28.06.2017 as amended by Notification No. 03/ 2019 CT (Rate) dated 29.03.2019 for the services of construction of affordable residential apartments and other than affordable residential apartments respectively in a Residential Real Estate Project is applicable for the construction services rendered in respect of affordable residential apartments and other than affordable residential apartments in a single project/ building that is being developed as Residential Real Estate Project.

7.2. The questions on which advance ruling is sought by the applicant falls within the purview of clause (b) of sub-section (2) of Section 97 of the CGST Act, 2017; i.e; applicability of a notification issued under the Act and hence admitted.

7.3. A new tax structure for real estate sector was introduced with effect from 01.04.2019 onwards by amendment of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 by Notification No. 03/2019 - Central Tax (Rate) dated 29.03.2019. The ruling is sought in respect of the services of construction of apartments that are being rendered by the applicant after 01.04.2019 and hence the rate as notified under the new tax structure is applicable in respect of the construction services rendered by the applicant.

7.4. The entries at Items (i) and (ia) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 reads as follows;

"Heading 9954 – Construction services -

(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on



construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)

(ia) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service).

7.5. The rate of GST applicable for entry at Item (i) is 1.5% [0.75% - CGST + 0.75% - SGST] and for the entry at Item No. (ia) is 7.5% [3.75% - CGST + 3.75% - SGST]. The above rate of GST is subject to the conditions mentioned therein.

The conditions that are common for both the entries are as extracted below;
 “Condition: Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;
 Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;



Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;

Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, - (i) the developer-promoter shall pay tax on supply of construction of apartments to the landowner- promoter, and (ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer-promoter towards the supply of construction of apartments by developer-promoter to him, provided the landowner-promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer- promoter.

Explanation. - (i) —developer- promoter is a promoter who constructs or converts a building into apartments or develops a plot for sale, (ii) landowner-promoter is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently, (iii) the landowner-promoter shall be eligible to utilise the credit of tax charged to him by the developer – promoter for payment of tax on apartments supplied by the landowner – promoter in such project.

Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development



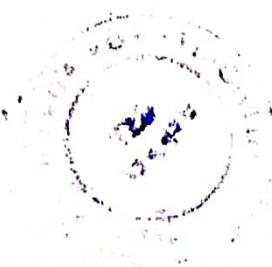
charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas, used in supplying the service shall be received from registered supplier only;

Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person;

Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent, central tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of nine percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;

Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;

Explanation. - 1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.



2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.

3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in the appropriate table in GSTR-3B.”

7.6. Para 2 of the Notification 11/2017 Central Tax (Rate) dated 28.06.2017 as amended from time to time which is applicable for calculation of value of supply in relation to the services specified at Items (i) and (ia) of Sl No. 3 of the said notification is reproduced below;

In case of supply of service specified in column (3), in item (i), (ia), (ib), (ic), (id), (ie) and (if) against serial number 3 of the Table above, involving transfer of land or undivided share of land, as the case may be, the value of such supply shall be equivalent to the total amount charged for such supply less the value of transfer of land or undivided share of land, as the case may be, and the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply. Explanation. –For the purposes of this paragraph, “total amount” means the sum total of,-

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be including by way of lease or sublease.

7.7. Para 4 of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as amended by Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019 provides the definition of the different terms used in the above entries. The relevant definitions are reproduced below;

(xiv) the term –apartment shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016;



(xv) the term — project shall mean a Real Estate Project or a Residential Real Estate Project;

(xvi) the term —affordable residential apartment shall mean, - (a) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

(xvii) the term —promoter shall have the same meaning as assigned to it in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(xviii) the term —Real Estate Project (REP) shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;

(xix) the term —Residential Real Estate Project (RREP) shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent of the total carpet area of all the apartments in the REP.

(xxix) “Residential apartment” shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority.

7.8. The relevant clauses of Section 2 of the Real Estate (Regulation and Development) Act, 2016 which contains the definition of the terms; “apartment”; “promoter” and “real estate project” are reproduced below;

(e) “apartment” whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors



or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

(zk) "promoter" means,— (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or (iii) any development authority or any other public body in respect of allottees of— (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its members or in respect of the allottees of such apartments or buildings; or (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or (vi) such other person who constructs any building or apartment for sale to the general public.

(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the



case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

7.9. On a plain reading of the entries at Item (i) and (ia) of Sl No. 3 of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 as extracted above, it is evident that the rate of GST prescribed under the entry at Item (i) applies to construction of affordable residential apartments and under the entry at Item (ia) applies to construction of residential apartments other than affordable residential apartments by a promoter in a residential real estate project intended for sale to a buyer except where the entire consideration is received after issuance of completion certificate.

7.10. On a conjoint reading of the entries at Item (i) and (ia) of Sl No. 3 of the Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017; the definition of the terms "apartment"; "residential apartment"; "affordable residential apartment"; "real estate project"; residential real estate project" and "promoter" as extracted above it is clear that the rate of tax prescribed in Item (i) and (ia) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 is in respect of construction services supplied for affordable and other than affordable residential apartments respectively in a residential real estate project. Therefore, the services of construction of affordable residential apartments and the services of construction of other than affordable residential apartments in a residential real estate project attract GST at the rate of 1.5% [0.75% - CGST + 0.75% - SGST] and 7.5% [3.75% - CGST + 3.75% - SGST] respectively as per entries at Items (i) and (ia) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017 subject to the conditions prescribed under the respective entries.

In view of the observations stated above, the following ruling is issued:



RULING

Question-1: Whether the rate mentioned Notification No. 3 of 2019 in Clause(ii) a(i) for affordable residential apartments and rate mentioned in Clause (iii) (a) (ia) for other than affordable residential apartments can be effectively levied in a single project/ building that is being developed as Residential Real Estate Project?

Answer: Yes. The services of construction of affordable residential apartments and the services of construction of other than affordable residential apartments in a residential real estate project attract GST at the rate of 1.5% [0.75% - CGST + 0.75% - SGST] and 7.5% [3.75% - CGST + 3.75% - SGST] respectively as per entries at Items (i) and (ia) of Sl No. 3 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017.

~~Sreeparvathy S.L.~~

~~Additional Commissioner of Central Tax~~
Member

Abdul Latheef K

Joint Commissioner of State Tax
Member

To,

M/s. Confident Projects Residential,
52/2618 - 868/2, S A Road,
Vytilla, Ernakulam - 682019.

Copy to,

1. The Chief Commissioner of Central Tax and Central Excise, Thiruvananthapuram Zone, C.R.Building, I.S.Press Road, Cochin-682018. [E-mail ID: cccocchin@nic.in; ccu-cexcok@nic.in]
2. The Commissioner of State Goods and Services Tax Department, Tax Towers, Karamana, Thiruvananthapuram - 695002.
3. The State Tax Officer, Tax Payee Services Circle, Vyttila, Ernakulam.

